ORIGINAL

(Name) Nathan Kevin Turner

(Address) Post Office Box 2000

(City, State, Zip) Vacaville, California. 95696-2000

(CDC Inmate No.) C-44886

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CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

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2254 ___ 1983 ✓

FILING FEE PAID Yes ___ No ✓

IFP MOTION FILED Yes ✓ No ___

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United States District Court
Southern District of California

Nathan Kevin Turner
(Enter full name of plaintiff in this action.)

Plaintiff,

v.

BONNIE DUMANIS, DISTRICT ATTORNEY OF THE COUNTY OF SAN DIEGO; SAN DIEGO POLICE DEPT.; DETECTIVE A. FRAGOSO OF THE SAN DIEGO COUNTY POLICE DEPT.; DETECTIVE J. DREIS OF THE SAN DIEGO COUNTY POLICE DEPT.; SAN DIEGO CRIME LAB AND THE ATTORNEY GENERAL OF STATE OF CALIF.,
(Enter full name of each defendant in this action.)

Defendant(s).

Civil Case No. '08 CV 0360 W RBB
(To be supplied by Court Clerk)

Complaint Under the Civil Rights Act 42 U.S.C. § 1983

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Plaintiff, NATHAN KEVIN TURNER (print Plaintiff's name) California State Prisoner, who presently resides at Post Office Box 2000 (mailing address or place of confinement), were violated by the actions of the below named individuals. The actions were directed against Plaintiff at California Medical Facility (institution/place where violation occurred) on (dates) ___ (Count 1), ___ (Count 2), and ___ (Count 3).

2. Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

Defendant BONNIE DUMANIS resides in SAN DIEGO COUNTY,
(name) (County of residence)
and is employed as a DISTRICT ATTORNEY. This defendant is sued in
(defendant's position/title (if any))
his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting under color of law:

Defendant A. FRAGOSO resides in SAN DIEGO COUNTY,
(name) (County of residence)
and is employed as a DETECTIVE, SAN DIEGO POLICE DEPT.. This defendant is sued in
(defendant's position/title (if any))
his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting under color of law:

Defendant J. DREIS resides in SAN DIEGO COUNTY,
(name) (County of residence)
and is employed as a DETECTIVE, SAN DIEGO POLICE DEPT.. This defendant is sued in
(defendant's position/title (if any))
his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting under color of law:

Defendant SAN DIEGO POLICE LAB resides in SAN DIEGO COUNTY,
(name) (County of residence)
and is employed as a . This defendant is sued in
(defendant's position/title (if any))
his/her ☐ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting under color of law:

PAGE #2(a) CONTINUED

Defendant San Diego Police Department, resides in San Diego County ,
and is employed as a San Diego Police Department. This defendant is being sued in his/her individual official capacity, Explain how this defendant was acting under Color of Law:

Defendant Edmond G. Brown, resides in San Diego County ,
and is employed as Attorney General of California. his defendant is being sued in his/her individual official capacity. Explain how this defendant was acting under Color of Law:

C. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

Count 1: The following civil right has been violated: **(See Attached pages)**
(E.g., right to medical care, access to courts,

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 1.]

Count 2: The following civil right has been violated: (See Attached pages)

(E.g., right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 2.]

Count 3: The following civil right has been violated:

(E.g., right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 3.]

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? ☐ Yes ☒ No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:
Plaintiffs: N/A ______________________________

Defendants: ______________________________

(b) Name of the court and docket number: ______________________________

______________________________.

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] ______________

______________________________.

(d) Issues raised:

____

____

____

______________________________.

(e) Approximate date case was filed: ______________________________.

(f) Approximate date of disposition: ______________________________.

2. Have you previously sought and exhausted all forms of informal or formal relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDC Inmate/Parolee Appeal Form 602, etc.] ? ☐ Yes ☐ No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

E. Request for Relief

Plaintiff requests that this Court grant the following relief: (See Complaint at page 23-26

1. An injunction preventing defendant(s):

2. Damages in the sum of $ 0.00

3. Punitive damages in the sum of $ 0.00

4. Other: (See Relief Relief Requested at page 23-26

F. Demand for Jury Trial

Plaintiff demands a trial by XX Jury ☐ Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

☑ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☑ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

I declare under the penalty of perjury that the foregoing is true and correct.

02/16 / 2008
Date

Nathan Kevin Turner
Signature of Plaintiff

Case Name: COMPLAINT UNDER THE CIVIL RIGHTS 42 U.S.C.§1983

Case Number: ____________________

Court: United States District Court Southern District

PROOF OF SERVICE BY MAIL

I, Nathan Kevin Turner declare:

That I am over the age of eighteen years of age and am not a party to the above entitled cause of action. That I reside in Solano County, California at the California Medical Facility, at 1600 California Drive, P.O. Box 2500, Vacaville, California, 95696-2500.

That on Feb. 16, 2008 I served the attached: a true copy of the attached:

One (1) Original and two (2) copies of 42 U.S.C. §1983

and attached complaint.

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal legal mail collection system at the California Medical Facility, Vacaville, California, addressed as follows:

United States District Court
Southern District of California
Office of the Clerk
880 Front Street, Suite 4290
San Diego, California 92101-8900

I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct. That this proof of service was executed on the Feb. 16, 2008 at California Medical Facility, Vacaville, California.

Nathan Kevin Turner
Declarant

Nathan Kevin Turner
Declarant's Signature

Nathan Kevin Turner
C-44886 - J-222L
Post Office Box 2000
Vacaville, CA 95696-2000

Plaintiff In Pro. Per.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Nathan Kevin Turner, Plaintiff, -vs- BONNIE DUMANIS, DISTRICT ATTORNEY OF THE COUNTY OF SAN DIEGO; SAN DIEGO POLICE DEPT.; DETECTIVE A. FRAGOSO OF THE SAN DIEGO COUNTY POLICE DEPT.; DETECTIVE J. DREIS OF THE SAN DIEGO COUNTY POLICE DEPT.; SAN DIEGO CRIME LAB; AND THE ATTORNEY GENERAL OF STATE OF CALIFORNIA Defendants.	Cae No. __________ COMPLAINT 42 U.S.C.§1983 JURY TRIAL REQUESTED

INTRODUCTION

I.

1) This complaint is being filed after being denied repeatedly and for years Post-Conviction discovery, a fundamental right to due process and equal protection.

2) Plaintiff asserts that he is a perfect candidate for Post-Coviction discovery DNA testing and maintain that the re-

sults would provide exculpatory results, which would be a basis of providing innocence or not.

3) Plaintiff argues that the remedy he seeks, the performance of DNA testing, does not require his release; nor does it invalidate his outstanding criminal judgment.

4) Plaintiff contends that his request for the production of evidence that Bonnie Dumanis, the District Attorney for the County of San Diego, et, al., willingly refuses to provide plaintiff, is not in the nature of a Writ of Habeas Corpus because he is not seeking immediate release. Only to prove or disprove validity of the held DNA evidence, or if the biological evidence was destroyed "illegally" and in "Bad Faith."

JURISDICTION

II.

5) This action is filed by virture of 42 U.S.C. §1983 because plaintiff can demonstrate the the defendants, el, al., has denied plaintiff access to this DNA biological evidence, i.e, deliberatly blocked his access to the evidence in order to impede his ability to take advantage of available Post-Conviction legal procedures, or destroyed it "illegally" and in "Bad Faith. This deprivation of "Rights," privileges." or "Immunities" secured by the constitution and the laws by state actors within the meaning of §1983, has deprived plaintiff of a federally protected right.

PARTIES

III.

6) Plaintiff, Nathan Kevin Turner, was incarcerated at all

times mentioned herein at California Medical Facility, and at the time of the filing of this complaint.

7)Defendant Bonnie Dumanis, is the District Attorney of the County of San Diego. Paul J. Pfingst was the District Attorney when Plaintiff requested that he provide [a]ny and "all" of plaintiff's DNA evidence be forwarded to the San Diego County Superior Court Judge and plaintiff in a State Post-Conviction discovery under Penal Code §1405. Palintiff made two additional request in 2002, all were ignored.

8) Defendant Bonnie Dumanis is the District Attorney of the County of San Diego and is being sued for interferring and obstructing plaintiff's access to the court's to prove that his only evidence was intentionally destroyed during on-going Post-Conviction litigation in "Bad Faith" to hide the exculpatory results.

9) Defendant San Diego County in which they reside over all crime scene evidence, DNA evidence and property, as well over see and maintain the stored biological evidence.

10) Defendant San Diego Police Department is a agency in stores all incoming and outgoing exhibits for the Court's of the County of San Diego. And was responsible for my biologcal evidence.

11) Defendant San Diego Police Department crime Lab whom perform test of crime scene evidence, reports and keeping of results of biological evidence, smears, hair, blood etc.

12) Defendant San Diego Police Department Detective A Fragoso, of the San Diego County Police Department whom collected crime scene evidence and stored it with signature stating "Hold Pending Appeal."

13) Defendant San Diego Police Department, Detective J. Dreis, of the San Diego Police Department whom collected crime scene evidence and stored it, as well as a reporting officer.

14) Defendant Edmond G. Brown Jr., is the Attorney General of the State of California who resides over all.

FACTS

IV.

15) Plaintiff was formally charged with fifty-five counts, ranging from peeping, burglary,rape , robbery, while armed with a deadly weapon. Plaintiff was represented by E.Hodge Crabtree III,. Plaintiff was sentenced to a very lengthy determinate state prison term, (174) years and (4) four months term.

16) Throughout plaintiff's trial, he maintained his innocence of any crimes of robbery,rape , burglary, and peeping against all victims, as plaintiff had absolutely nothing to do with these cirmes, and is the sole focus of this litigation.

17) During the trial, the biological evidence, that is, "all" the semen samples taken directly from the victims multiple slides, e.g.,vaginal smears,mouth,smears, and tampon, completely and irrefutably exonerates plaintiff from these crimes as several victims DNA samples did not match plaintiff's or were inconclusive.

18) Plaintiff's evidence was collected, by the defendant San Diego Department detectives and local Hospitals. These samples were categorically inventored and made readily available, via the use of property tags. Said property tags were assigned a specific number and keet in the custody and care of designed storekeeper III, John R. Trebil, who was employed by the San Diego Police Department.

19) The controversy occurred when the San Diego Police Department crime lab informed the prosecution of the County of San Diego that all pieces of evidence of biological revealed blood type "A" and "B" which is contrary to plaintiff's which is blood type "O". When this became known to prosecution, plaintiff was offered (75) seventy five years to plead to all counts plaintiff rejected this offer as he knew that he would be pleading guilty to crimes that he did not commit and did not believe in face of all the overwhelming physical evidence that excluded plaintiff as a suspect, that he would be found guilty. He was obviously sadly mistaken.

20) In order for prosecution to undermine this explosive evidence which was completely in favor of plaintiff; and in order to get a conviction of those crimes not with standing plaintiff's innocence, the prosecution introduced a false/alleged confession, and several inconclusive samples that did not match plaintiff's DNA blood type. The defendant's who were responsible for this introduction of a false/alleged confession and evidence was from detectives A. Fragoso, and J. Dreis

21) Plaintiff was even denied access to test and evaluate this evidence once presented because trial counsel never employed the services of a expert witness or an investigator to confirm the prosecutor's findings. The Judge denied all request for funds to employ such services.

FACTS AND CHRONOLOGICAL HISTORY

22) Plaintiff's jury trial commenced on January 11, 1982. Wherefore at varies times during the trial evidence kept in defendant San Diego Police Department's property room it was re-

leased to the detective initially assigned to investigate any one of the fifty-five charges alleged in the information filed against the plaintiff. The detective, would turn the evidence over to a court clerk so that the item(s) could be presented to the jury in plaintiff's trial..

23) According to the defendant's department policy of protocal the detectives are to have a "Court evidence order receipt" if the court retain the evidence delivered by the detectives. Thus, during plaintiff's trial (9) nine out of (11) eleven exchanges of evidence between the Court clerk and Police detectives who were proceduarally correct, thereby accounting for (11) eleven out of (44) Forty-four registered items of property. There were (18) eighteen victims and each individual case was assigned its own property number. The property and physical samples belonging to plaintiff and was assigned (2) two separate property tag numbers.[1/]

24) Plaintiff was unsuccessfully pursued from his conviction and sentence through appeal since 1983, and being untrained in the law he did not know how to present this issue; however, he has always been denied based on procedural grounds. Plaintiff had litigation pending immediately after his conviction to the Court of appeal, which affirmed his conviction on or about March

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1/ On or about 5/18/83, defendant A. Fragoso was making arrangments to destroy plaintiff's evidence. (2) two property tag slips identifying plaintiff's property stated "Hold Pending Appeal." Therefore, at that point the defendant's was obligated to check the Court's computerized list of pending cases to determine whether or not plaintiff had on going Post-Conviction pending before the evidence could "legally" be destroyed. It was not plaintiff's obligation to inform the Court that litigation was pending following his illegal conviction.

30, 1983. Thereafter in 1983, plaintiff had litigation on going up until the AFDPA of 1996. Thus, all evidence "must be preserved pending litigation. Especially evidence that's the center of dispute.

25) Plaintiff was convicted in March 22, 1982. His direct appeal was lost in August 26 , 1983. When (and maybe if) he filed a petition for review with the State Supreme Court is unclear at this point. An order, to destroy or release trial exhibits was issued by the Superior Court on August 6, 1987. The order was apparently sent to plaintiff's trial attorney, E.Hodge Crabtree III. At the time of his direct appeal, according to plaintiff, he was represented by M.N. Schneiderwind, whether Mr. Schneiderwind, also handled a petition to the California Supreme Court, or if plaintiff did so Pro. Se, is unknown. The evidence in the trial Court's possession was destroyed or otherwise disposed of in February 22 , 1987.In violation of procedural due process.

DIRECT APPEAL

26) From 1983 (the conviction) 1995. Direct Appeal: Fourth District, 4 Crim. No. 13857: Appeal Denied in 1983. **Issues Raised:** Confession influenced by PCP use; Incompetent Counsel; Trial Court Refused to Appoint New Counsel; Failure to properly Instruct Alternate Juror; Unconstitutional Sentence. **Court Decision:** Appeal "meritless;" conviction and sentence affirmed.

STATE PETITION FOR REVIEW

27) According to the federal case opinion, the State Supreme Court summarily denied a petition for review without comment. Filing date, decision date and issues raised are unknown.

FEDERAL PETITION

28) Habeas petition, District Court, CV-85-0783-G filed March 10, 1985. Petition denied on June 19, 1985. Notice of Appeal filed July 19, 1985. Petition for Certificate of Probable Cause denied by District Court August 27, 1985.

29) On September 25, 1997, the Ninth Circuit Court of Appeal reversed and remanded the District Court's denial of Plaintiff's petition for Writ of Habeas Corpus (See **Turner v. Compoy**, (1987) 827 F.2d 526.

30) Certificate of probable Cause issued November 21, 1987.

31) Reversed and Remanded to District Court in order certified September 25, 1987. Application for Counsel denied by the Supreme Court an order received by District Court December 28, 1987. (See the Ninth Court's at **Turner v. Compoy**, (1987) 827 F.2d 526. The Court ruled that the District Court has erred in denying the petition before reaching the merits. The Appellate Court found, contrary to the District Court determination, That plaintiff had exhausted his State remedies, through a State Habeas Corpus petition was preferable in California, one is not required to be eligible to file a Federal Habeas case,

32) Case back on District Court Calender. On or about June 19, 1985.

33) Issues raised appear to be the same as those in the direct appeal Court defers to the California legislature "in deciding that plaintiff's sentence does not constitute Cruel and Unusual Punishment." Habeas petition denied, case closed. October 22, 1990. Notice of Appeal and petition for a Certificate of Probable Cause filed on the same day as the judgment.

34) Request for Certificate of Probable Cause denied by the District Court July 31, 1991.

SECOND FEDERAL APPEAL

35) District Court ruling affirmed on January 8, 1993 at 1993 U.S. APP. Lexis 27560.

UNITED STATES SUPREME COURT

36) Filed in 1995. Petition for review denied on October 10, 1995 at 516 U.S. 919.

37) Plaintiff's procedural history in a Superior Court decision issued May 13, 1998, and a Court of appeal decision filed October 3, 1997. The following timeline can be determined.

38) Plaintiff's Superior Court, Writ of Habeas Corpus HC14929. Issues raised (11) eleven including a claim concerning "the introduction and use of DNA evidence." Petition denied May 19, 1997.

39) Plaintiff's 4th District Court of Appeal, Writ of Habeas Corpus D029361. Petition denied October 3, 1997. In response to the claim the trial Court excluded exculpatory DNA evidence.The Court notes such evidence was offered, with regard to the claim of "New" DNA evidence. The Court found Plaintiff did not present a Prima Facie case.

40) Plaintiff's Superior Court, Writ of Habeas Corpus HC14929 (2d Petition). Denied March 13, 1998 for failing to provide justification for filing numerous Habeas claims. Plaintiff also filed a Motion to Introduce New DNA evidence with this petition which was also denied.

41) On or about 1999 in his non-exhaustive quest to provide the Court a Prima Facie pleading, via Direct Appeal from his conviction, plaintiff contacted his trial attorney, E. Hodge Crabtree III, Plaintiff sought the trial attorney's files to no avail.

42) On or about 2000 - 2001, and as plaintiff continued to

challenge his conviction, collterally he contacted the Innocent Project at Cardoza School of Law, 55 5th Avenue, New York, NY and a Ms. Jane Green, subsequently contacted the office of the district attorney in San Diego. Wherefore, Ms. Elizibeth Guerrero the district attorney's DNA Project provided Ms. Green "all the destruction orders for this case."

43) On or about December 4 , 2002, plaintiff motioned the Superior Court in and for the County of San Diego for DNA testing [Pursuant to California Penal Code §1405 and §1417.9]; and a appointment of counsel; and for a new trial.

44) On or about September 2 , 2003, plaintiff was informed that Deputy Public Defender Susan P. Clemens, was assigned to assist plaintiff in the location and preservation of DNA evidence, Ms. Clemens, while working in conjunction with the Innocence Project. The San Diego Police Department's property room Supervisor, and the senior exhibit custodian for the San Diego Superior Court's discovered that all evidence presented at plaintiff's trial remained in the court's possession after **plaintiff's trial conviction and was destroyed after the** California Court of Appeal affirmed plaintiff's conviction and other physiological evidence where released to the victims soon after the trial was over. The local Hospital's that conducted examinations of the rape victims had turned over all their evidence [discoveries] to law enforcement.

45) On or about February 13, 2004, Ms. Clemens, informed **Plaintiff that: "We are unable to proceed with DNA testing because all the evidence** is gone." We are now looking into the timing and circumstances of the destruction of evidence to

determine if there is any relief available to you for "illegal destruction of evidence."

46) On or about July 21, 2004, the Superior Court filed plaintiff's petition for Writ of Habeas Corpus HC 14929. Therefore, plaintiff raised four (4) claims for relief: 1) The improper Challenging of the same offenses in numerous counts of information, multiplicity violates the Fifth Amendment protection against double jeopardy, as to the crime independent to the principal term crime; 2) Imposition of Aggravated and Consecutive Sentences in violation of Prohibition Against Dual Use of Facts; 3) Consecutive term Sentence Enhancement within Dual use of Facts Prohibition; 4) The Sentencing Process, as well as the trial itself, must satisfyrequirements of Due Process Clause.

47) On or about March 17, 2005, Deputy Public Defender, Susan P. Clemens, decision to conclude her investigation was emphasized in a massive to both the Honorable Judge Michael Willington on March 17, 2005.

48) On or about March 23, 2005, Deputy Public Defender Ms. Clemens, sent a letter to plaintiff as well as to the court RE: 1405 DNA Testing Motion, CR56189 investigation its at a end no basis for filing under Penal Code §1405, or for wrongful destruction of evidence.

49) Or or about July 21, 2004, plaintiff filed Writ of Habeas Corpus alleging specific sentencing violations in Superior Court of California County of San Diego. Denied.

50) On or about August 3, 2005, the Superior Court confirmed the total destruction of evidence. Therefore, the Court did not make any final order regarding the testing of DNA evidence.

51) On or about October 24, 2005, plaintiff petition for Writ of Habeas Corpus filed in the California Court of Appeal Fourth District Division one (Case No. D047370).

52) On or about December 30, 2005, the California Court of Appeals denied plaintiff's relief.

53) On or about November 29, 2006, plaintiff submitted a Petition was filed in the Supreme Court of California, denied relief. On December 09, 2006, submitted reconsideration denied.

54) On or about October 19, 2007, plaintiff filed a Federal Writ of Habeas Corpus in regards to Instructional Sentencing error, Motion for Appointment of Counsel.

55) On or about April 19, 2007. plaintiff submitted a petition for State Habeas Corpus pertaining "Illegal and Unauthorized Sentence" to Consecutive and Dual Use of Facts and Sentence with Enhancements without a jury findings. Denied 2007.

56) On or about June 28, 2007, plaintiff submitted State Writ of Habeas Corpus to Fourth Appellate District Division one petition was denied September 14, 2007.

57) On or about December 27, 2007, plaintiff submitted petition for Habeas Corpus to California State Supreme Court. **Cunningham v. California** (2007) 549 U.S.___ [166 L.Ed 2d 856, 127 S. Ct. 856] Pending. P.C. §1405 litigation.

58) Therefore, in 2000, Penal Code §1405 was enacted by the People of the State of California which allowed any person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion before the trial court that entered the judgment of conviction in his or her case, for the performance of DNA testing.[2/] (See fn. 2 on page 13.

59) This Amendment was enacted on an enormous amount of prisoners found completely innocent after under going DNA testing. Some of these prisoners were on the highest sentences type trial based on their sentencing constituting death. Therefore P.C.§1405 became not only necessary, but since proved that many prisoners which the State of California has already been shown to be totally innocent. Thus, plaintiff has yet to under go this testing process which is now available to him.

60) Penal Code §1405(c) provides in part: "After being reviewd by the court and the plaintiff has presented facts that are meritorous, Counsel Shall be appointed by the court."

61) Plaintiff found out about P.C. §1405 in 2002, after plaintiff filed said motion to the Superior Court for the County of San Diego, after presenting a prima facie showing of merit by virtue of documented evidence, i.e, attached excerpts from plaintiff's trial transcripts counsel was appointed on or about March 20, 2003.

62) Plaintiff corresponded back and forth with appointed counsel Susan Clemens for almost two (2) years, but it became apparent that her interest in plaintiff's case was remote. Because counsel continuously put plaintiff off about answering questions regarding the evidence in question of locating the evidence. On or about July 28, 04/05 plaintiff had no other choice but to file an *ex parte* motion explaining same to Superior Court and requested the substitution of appointed counsel, and that she be dismissed and replaced with experienced DNA counsel who would effectively litigate plaintiff's case.

2/ Newspaper article RE: DNA test may re-open many cases

63) The Superior Court Judge denied plaintiff's motion, but indicated that plaintiff should be aware that he gave Me. Clemens an extention for time thus, plaintiff awaited.

64) Therefore, on or about Oct. 22, 01-02, plaintiff wrote to defendant and his agents at the district attorney office. In the same office building of the court, and requested "All" documents, letters, file, records, logs, and [a]ny and [a]ll DNA evidence that he may possess be forwarded to the Superior Court Judge Peter C. Deddeh, who was presiding over the case. Plaintiff received a response.

65) Plaintiff constantly writting attorney Susan Clemens inquiring as to the status of plaintiff's case, she informed plaintiff that she wanted to conduct her own research to determine if "any" of my DNA evidence was available.

66) Therefore, on November 21. 2003 attorney Clemens wrote plaintiff and advised him that: 1) She has scheduled a hearing with the Superior Court to discuss plaintiff's case; 2) All the evidence had indeed been destroyed; and 3) That she had enclosed declaration(s) from the San Diego County Police Department Senior Exhibit Custodian of Records and Property Room Supervisior outlining the procedures for locating booked and tagged biological evidence.

67) On or about February 13, 2004, attorney Clemens wrote plaintiff another letter reinterating that plaintiff's DNA evidence had been destroyed, and that "We are now looking into the timing and circumstances of the destruction of evidence to determine if there is any relief to you for illegal destruction of evidence. She also indicated that she contact my trial and

appelant attorney's for additional information.

68) In the DESTRUCTION ORDER provided to plaintiff by the Innocence Project, I learned that my biological evidence had been destroyed on "**August 18, 1987**," **which was four (4) years after** the San Diego Police Department checked and specifically determined that I had on-going post-conviction litgation "pending." As a form of procedural due process, they were obligated to computrized files to determine, as they did in 1983, whether or not I still had on-going litigation "pending" before any evidence would be destroyed. It was not my fault that they prematurely destroyed my evidence. Plaintiff maintain that it was destroyed in "Bad Faith" as plaintiff was getting closer and closer to proving my innocence for crimes that plaintiff did not commit, and the San Diego police department and DA's office knew it.

69) On or about March 17, 2005, Plaintiff received a letter from attorney Clemens. For no apparent reason whatsoever, attorney completely abandoned the possible illegal destruction of evidence investigation. She claimed that: "because you did not serve the documents on the Superior Court of San Diego in your Federal case ··· you did not request preservation of evidence in your federal filing. . . the federal filing begain after the destruction of evidence order was issued by the Superior Court in 1987.

70) Plaintiff told attorney Clemens her position was in error because the San Diego police department and the district attorney s office had specific knowledge that plaintiff had **an on-going post conviction litigation pending, and that it was their obligation** to check before any such destruction of evidence would take place as they did in 1983 to "Hold-Case Pending Appeal," and therefore

Plaintiff's DNA evidence should have been "preserved" as long as any such post-conviction appeals were pending.

71) Even in light of these clear questionable facts that required further investigation, attorney Clemens closed plaintiff case under Penal Code Section §1405 and any such possible relief for wrongful destruction evidence, for whatever reason and refused to provide plaintiff with any further assistance.

72) Plaintiff maintain that their is absolutely no question that the Police authorities of San Diego County knew that I did not commit any such crime of rape and is the reason that they intentionally had all plaintiff's evidence destroyed so that he could not prove his innocence. Plaintiff's evidence was also destroyed in "Bad Faith" to hide the true exculpatory results.

73) Because plaintiff had not heard anything from attorney Clemens plaintiff wrote the Superior Court Judge and inquired about the status of plaintiff's case. The same day that attorney Clemens wrote plaintiff and abandoned all legal assistance, she also wrote the Judge. She stated in part: "Our investigation is now complete. . . it can not be shown that the evidecne was wrongfully destroyed. . .

74) Plaintiff's rights has been violated this type of illegal conduct i.e, denying the DNA evidence exist for testing or have been destroyed is typical for Law Enforcement Agencies all around the Country, according to Professor Barry Scheck, Esq. And especially in San Diego County. And, moreover, if the intergrity of a conviction is called into question, the evidence is almost always immediately put up for destruction.

75) A case in point is the matter of Fredrick Rene Daye,

Wherein he was convicted in 1984 for sexual assault and kidnapping. After his crime partner wrote a letter in 1990 to the San Diego County Superior Court and indicated that **Daye** that he was not the other individual involved in the crime, and named the other individual who was, the Superior Court appointed counsel to investigate these facts.

76) When no follow-up work was done court appointed attorney by the Court to ascertain the truth of **Day's** illegal conviction, the Appellate Defenders, Inc. (ADI) helped **Daye** file a Habeas Corpus petition to address his issue of "Actual Innocence."

77) In August of 1992 **Daye's** habeas was denied. However, based on the questionable facts of the case, the court also ruled that **Daye** was entitled to "New representation" and (ADI) took over the case. In October 1992, once the (ADI) took over, they was "notified" as plaintiff should have been because plaintiff too had on-going post-conviction pending, that "**The original evidence from the trial was going to be destroyed.**

78) **Daye** was freed 1993 after DNA testing proved that he was not the source of semen found on the clothing of the women who was abducted and raped in San Diego in 1983.

79) Plaintiff than advised counsel that this unauthorized destruction of evidence was in violation of his Constitutional Rifgts after his conviction was affirmed, and during pending litigation has clearly impeded upon a fair appellate review of all legally admissible evidence, in violation of due process. Moreover, plaintiff advised attorney Clemens that if indeed the biological evidence in plaintiff's case had been destroyed, willingly, when clearly this evidence was the center of dispute in plaintiff's trial within the statutory time frame.

80) Moreover, plaintiff pointed out to the Court that pursuant to P.C. §1417.9 -- The **Retention of Biological Material** clearly applied to plaintiff's case exhibiting questionable circumstances and those who ordered the destruction of evidence did not follow the laws as written:

"(a) Notwithstanding any other provisions of the law and subject to subdivision (b), the appropriate government entity **shall retain all biological** Material that is secured in connection with a criminal case for the period of time that any person remaining incarcerated in connection with that case. The governmental entity shall have discretion to determine how the evidence is retained pursuant to this section. . .

"(b) A governmental entity may dispose of biological material before the expiration of the period of time described in subdivision (a) if all of the conditions set forth below are met:

(1) The governmental entity notifies all of the following person(s) of the provisions of this section and of the intention of the govenmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and Who remains incarcerated in connection with the case. . .

"(c) Notwithstanding any other provisions of the law, the **right to receive notice pursuant to this section is absolute and shall not be waived.**"

81) Plaintiff further maintained to the court that, "if" the evidence has been destroyed, which is hearsay at this point, plaintiff was never notified giving him an opportunity to file a written notice to the court requesting that the evidence be retain pursuant to P.C. §1417.9 (2) (B)&(C), and there is no document signed by plaintiff verifying contrary. At this point plaintiff has not been provided with the opportunity for post-conviction discovery to develop conflicting evidence regarding the availability of the evidence he seeks.

82) Thereafter, on or about 3/17/05. a different Superior Court Judge, not the Honorable Peter C Deddeh who presided over the case for all proposes since 2002, denied plaintiff's 1) Motion for DNA testing pursuant to P.C. §1405; 2) Plaintiff's Habeas Corpus; 3) Supplemental Motion; and, obviously without considering all the documented evidence and motion(s) previously filed by plaintiff.[3]

83) The first reason for the denial was that plaintiff had fail to meet the prima facie elements enumerated under P.C. §1405. Plaintiff maintains that this is not definitive because whether or not plaintiff's evidence is still available for testing is speculative and hearsay at this point, leaving room for doubt, and at the very least, an order should have been issued by that court to solve this question once and for all.

84) Secondly, that **Plaintiff has failed to show that material sought for testing is available.** Again, the very heart of this litigation and one obviously ignored by the court. The Court further ruled:

85) Lastly, plaintiff alleges that, in light of the state's destruction of evidence in his case, the burden shifts to the state. Plaintiff has suffered prejudiced as a result of the destruction of the evidence. In response to this, plaintiff maintains that if the prosecution of the County of San Diego dsetroyed the exculpatory evidence to cover-up its true hidden value and impede upon plaintiff's opportunity for a fair appellate

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[3] This is the "minute Order" denying the above-mentioned with a copy of a "Proof of Service" Verifying that not only had plaintiff infrom the defendant and his agents of the litigation, but the Court did as well.

review was "bad faith," then plaintiff avers that he has been prejudiced in violation of a federally protected right.

86) Thereafter on or about October 5, 2005 , plaintiff appealed to the California Court of Appeal, Fourth Appellate District Division one his denial of post-conviction discovery and habeas corpus.

87) On or about December 30, 05 the Court of Appeal denied on procedural grounds which plaintiff did receive.

88) Again, plaintiff asserts that this question has never been answered despite the Court of Appeal erroneous conculsion.

89) On or about November 6, 2006, California State Supreme Court denied plaintiff Writ of Habeas Corpus, as well as his re-consideration, obviously it was denied based on its previously stated erroneous procedural grounds, i.e., untimeliness.

90) Itshould be noted that plaintiff has done everything that he could to resolve this issue, but has always been denied based on erroneous rulings. However, the scientific advancement of DNA testing and P.C. §1405 has now allowed those, such as plaintiff, who have been convicted of crime or crime(s) wherein biological evidence is available be permitted to prove their innocence falls squarely in plaintiff's case, which clearly grants him leave to adjudicate this issue. Yet no court has issued the appropriate order to compel the defendant and/or his agents to present this evidence, one way or the other, to verify plaintiff's claim. This critical question has never been answered, only conjecture at this point, yet the state is of the position that plaintiff failed to show that DNA materials are in the possession of prosecution/D.A. of San Diego, all the while denying plaintiff

of the opportunity or ability to ascertain the accuracy of this statement made by the court'(s) to prove or disprove if such evidence is in fact available.

THE INFRINGEMENT OF CONSTITUTIONAL RIGHTS:

91) The defendant, acting under the color of state law, has deprived plaintiff of his Constitutional rights. Plaintiff's claims for relief are:

(1) That the defendant has deprived plaintiff of a federally protected right under the Due Process Clause under the Fourteenth Amendment by refusing to search for and provide the evidence for DNA testing;

(2) That by refusing to provide the evidence for DNA testing, defendant has deprived plaintiff the opportunity to show he is innocent of the crimes for which he is incarcerated, in violation of the Fifth and Fourteenth Amendment;

(3) That by refusing to search for and provide the evidence for DNA testing, plaintiff cannot make a truly persuasive showing of innocence, in violation if the Cruel and Unusual Punishment Clause of the Eight Amendment;

(4) That by refusing to search for and provide the evidence for DNA testing, the plaintiff is deprived of his right to present evidence of innocence in state court, federal court or before the Board of Pardon in violation of the Confrontation and Compulsory Process Clause of the Sixth Amendment;

(5) That by refusing to search for an provide the evidence for DNA testing. defendant and his agents has deprived plaintiff of the opportunity to effectively litigate his claim that he is innocent of crimes for which he is currently incarcerated, thereby

preventing plaintiff from access to state and federal court to obtain legal relief, in violation of due process and equal protection guarantees of the Fourteenth Amendment; and,

(6) Deprived plaintiff of his right to avail himself of the opportunity to apply for Executive Clemency serves in preventing the violation of his Constitutional rights that woul arise from continued incarceration.

RIGHT TO ACCESS TO POST-CONVICTION PROCEDURES:

92) It is well established that due process requires government official to permit prisoner's "adequate, effective, and meaningful" access to the court system to litigate post-conviction legal issues such as habeas corpus and civil rights action. As such, the government must ensure that prisoners have the substantive ability to take full advantage of post-conviction legal options.

OBLIGATIONS TO TURN OVER EXCULPATORY EVIDENCE:

93) It has long been established, that the state is under an obligation to come forwarded with any exculpatory semen evidence in its possession. The Court's has ruled, not only the state's post duty to turn over exculpatory evidence during trial, but to its present duty to turn over exculpatory evidence relevant to any habeas corpus proceedings or otherwise.

DEFENDANT REFUSAL TO PROVIDE DNA EVIDENCE IS "BAD FAITH":

94) Plaintiff maintains that he made every single effort to secure the biological evidence in his case but has been denied based on procedural grounds all alone. This is "bad faith."

95) Secondly, if plaintiff's physical evidence has been destroyed before the statutory time frame, without contacting plaintiff and giving him an opportunity to request this

destruction of evidence be stayed and/or waived pursuant to the law as many other convictions wherein DNA evidence was available 5,10 or even 15 years later), while litigation was pending - this was also "bad faith."

96) Thirdly, if the prosecution intentionally ordered the destruction of said evidence in violation of the Constitution after conviction was affirmed and while ligation was pending, and said evidence was the center of dispute, obviously done to permanently bar plaintiff from proving his innocence, is nothing less than "bad faith." Clearly the prosecution knew this evidence was critical as it was the only evidence that allegedly linked plaintiff to those crimes. And now, District Attorney of the County of San Diego is doing everything that she can to further bar him from having this evidence examined, and even refuses to reveal if the evidence still exist, 25 years, later is "bad faith."

97) Finally, the denial of access to said evidence, if any is available, in order to impede plaintiff's ability to take advantage of his available post-conviction legal procedures, has frustrated his exercise of his Constitutional rights.

CONCLUSION

Our American judicial system is the best in the world. Although imperfect, it sets the ascertainment of truth and the protection of innocence as its highest goals, and prosecutors must prove their cases beyond a reasonable doubt that a crime occured. And that **this concern does not end at trial.**

Elaborate post-conviction procedures are rightly in place to ensure not only that a trial was fair, but also **that no individual**

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has been wrongfully convicted. This is the cornerstone of the judicial process and can not be one-sided.

Plaintiff has established with detail an unassailable text-book case detailing the clear violation, one after the other how his Constitutional rights were violated. It is the scared duty of the Court when violation of the Constitution is discovered to step in and enforce the laws as written. At this point plaintiff has not received a fair shake from the judicial system.

PRAYER FOR THE APPROPRIATE RELIEF:

Appellant prays that this Honorable Court will:

1) Plaintiff seeks equitable relief, including but not limited to, a search for the release of [a]ny and "**ALL**" DNA biological evidence , notwithstanding the fact that defendant Bonnie Dumanis claim that the DNA evidence was destroyed on August 6 , 1987. This order did not specifically say "all" of plaintiff's DNA evidence had been destroyed, it was merely a destruction order, wherein plaintiff's family is preparing a defense fund to pay for same;

2) Issue an order appointing counsel to search for any and "all" such DNA evidence to determine without absolute certainty no DNA evidence exist;

3) An injunction be issued stating that plaintiff's rights under the Fifth, Sixth, Eight, and Fourteenth Amendments to the United States Constitution has been violated;

4) Grant plaintiff's Motion for the Appointment of Counsel, and refer it to the Pro Bono coordinator who can see that this case is far too complicated for plaintiff; and then actually appoint Pro Bono counsel to this First Impression complex DNA

appeal; to ascertain the truth of whether or not his DNA evidence is extant, or, was it destroyed and the exact date that "ALL" of the DNA was destroyed;

5) Further ORDER an investigation into whether or not the defendants predecessors intentionally ordered said DNA evidence to be destroyed during on-going post-conviction litigation, and if so, was it illegally done in **"Bad Faith"** to hide its exculpatory value;

6) An investigation into the defendants motives into claiming that ALL of plaintiff's DNA have been destroyed without proof and willingly refusing to turn over such physical or documentary evidence, and does the defendants acts and omissions raise to the level of obstructing justice and denying plaintiff access to the Courts by intentionally refusing to present the evidence in question which would justify further judicial relief;

7) Further ORDER that the defendants **"FULLY COOPERATE** WITH appointed counsel and give him unlimited access to all files, including but not limited to for inspection within the defendants possession, custody or control, or within the possession, custody or control of their agents, colleague, co-workers and employee/ employers and their attorney's "ALL" destruction orders, exhibit disposal list, property tab records, rape kits property tag numbers, and any physical rape kit evidence, clothing, swabs, smears, hairs, blood, test exhibit room log numbers and all locator cards with the date of destruction as well as the signature and dates pertaining to destruction, notices of directive memo's, intake property log books, records, results

of investigations, files reports, letters, microfilm, declarations, tests results, computer files, logs, notebooks, or papers similar to any of the foregoing, however denomination; and all data compilation from which information can be obtained; and, all test that was inconculsive;

8) Further after an investigation by appointed counsel, and it is revealed that the DNA evidence **is extant**, that defendants be ORDERED to immediately turn over same for testing by a renowned lab agreed upon by parties; or, **if** it is determined after a thorough examination of the aforementioned documents that the evidence in question was "destroyed" and that this destruction was done **during on-going "pending" post conviction litigation**, allow the parties to fully brief the issues involed;

9) Grant plaintiff any and all other relief, that is not articulated herein, that the above-entitled court deems just, equitable and in the interest of justice.

I swear under the penalties of perjury that the foregoing is true and correct.

Executed at Vacaville, California.

Dated: **Feb. 16, 2008**

Respectfully Submitted,

Nathan Kevin Turner
Nathan Kevin Turner
Plaintiff In Pro. Per.

JS44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILED
2008 FEB 25 PM 3:54
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ______ DEPUTY

2254 ___ 1983 ✓
FILING FEE PAID
Yes ___ No ✓
IFP MOTION FILED
Yes ✓ No ___
COPIES SENT TO
Court ✓ Pro Se ___

I (a) PLAINTIFFS

Nathan Kevin Turner

DEFENDANTS

Dumanis, et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Solano
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Nathan Kevin Turner
PO Box 2000
Vacaville, CA 95696
C-44886

ATTORNEYS (IF KNOWN)

'08 CV 0360 W RBB

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. 1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury- Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc.
- ☐ Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectmant
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☒ 550 Civil Rights

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $**
Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE February 25, 2008

~~SIGNATURE OF ATTORNEY OF RECORD~~